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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

* * *

GEORGE F. DENTON, et al.

Petitioners,

v.

MIKE HERNANDEZ,

Respondent.

No. 90-1846

MOTION TO DISPENSE WITH JOINT APPENDIX

(Rule 26.7)

Pursuant to Rule 26.7 of the Supreme Court Rules, the parties to the above-entitled matter move this Court to dispense with the requirement that a joint appendix be printed and permit this matter to be heard on the original record, i.e. the entire record before the court below, including pleadings and evidence, and the proceedings in the courts below. 13 Moore's Federal Practice (2d ed. 1991) at ftn. 6, SC 26-5. The parties, through their counsel, have conferred prior to the making of this motion and petitioners are authorized to represent herein that counsel for respondent is in agreement with this motion.

The following constitutes good cause for the granting of this motion. Upon information and belief, all relevant orders and opinions are contained in the appendix to the petition for certiorari. Moreover, in light of this Court's instructions to counsel that

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no extensions of time will be granted for the filing of briefs, counsel infer that this Court desires a speedy resolution of this matter and dispensing with the printing of the joint appendix will expedite the resolution of the case. Cf. Erie-Lackawanna Ry. Co. v. U.S., 385 U.S. 914, 915 (1966). Finally, the question presented on certiorari to this Court is primarily a legal one involving the definition of a term of art, "fivolity", in 28 U.S.C. section 1915(d) and no complex factual issues are implicated in the resolution of the issue. Cf. Gladden Co. v. Zdanok, 370 U.S. 530, 534 (1962) at ftn. 7.

CONCLUSION

Petitioners respectfully request that the requirement for printing of the joint appendix be dispensed with for the reasons set forth above. Respondent has no objection to the granting of this motion.

Dated: November 22, 1991

Respecfully submitted,

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON, Chief Assistant
Attorney General

JAMES CHING, Supervising
Deputy Attorney General
Counsel of Record

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY)
OF SACRAMENTO)

CYNTHIA BAIN, being first duly sworn on oath deposes and states:

I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On November 22, 1991, I served the attached **Motion to Dispense with Joint Appendix** in Denton, et al. v. Mike Hernandez, No. 90-1846, by placing a true copy thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

RICHARD W. NICHOLS, ESQ.
McDONOUGH, HOLLAND & ALLEN
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555 Capitol Mall, Suite 950
Sacramento, CA 95814

Cynthia Bain
AFFIANT